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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-219358
MATTER OF: Viereck Company

DATE: August 23, 1985

DIGEST:

Contracting officer may properly cancel a solicitation after bid opening where allotted funds are inadequate to make award and additional funds are unavailable.

Viereck Company protests the rejection of all bids and the cancellation of invitation for bids No. M62204-85-B-0011, issued by the Marine Corps Logistics Base, Barstow, California. The solicitation was for one turret punch press, Bendix Centrum 1000 model or equal. This equipment is used to fabricate air conditioning ducts, signs, and other metal parts that are no longer commercially available.

We deny the protest.

In a protest to the agency, Viereck challenged the punch capacity and mounted computer numerical control requirements of the original solicitation as being unique to one manufacturer. The agency subsequently canceled that solicitation before bid opening and resolicited after changing some of the allegedly proprietary specifications. The cancellation of the second solicitation is at issue here.

At bid opening on February 28, 1985, Viereck was the low bidder at \$109,000 for a Strippit CAP-1000 punch press, followed by Meyer Machinery Company at \$111,700 for the brand name punch press. The Marine Corps conducted a technical evaluation because Viereck intended to furnish specially tooled components and to modify the standard Strippit equipment to meet specifications. On May 13, the contracting officer determined that Viereck's bid was responsive.

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The Procurement Marine Corps (which manages funds at headquarters level) had allotted only \$50,000 for the punch press purchase. This estimate was based on the price of the item the last time it had been procured, plus 10 percent. After learning that the additional funds would not be available, the contracting officer canceled the second solicitation, determining that the only two bid prices were unreasonable.

Viereck contends that the contracting officer canceled the solicitation without a compelling reason. Viereck characterizes the determination that bid prices were unreasonable as irrational and arbitrary, since the \$50,000 government estimate was less than half the advertised price of the Bendix Centrum 1000. The firm implies that the government estimate was too low, rather than that bids were too high. Viereck further argues that the contracting officer should have requested additional funds when bid opening first revealed the inadequacy of the initial allocation. Finally, Viereck alleges that the contracting officer was attempting to make a sole-source award and would have obtained funding for a contract with Meyer Machinery if Viereck had been found nonresponsive. Viereck requests award of the contract and reimbursement for bid preparation costs, protest costs, and attorney's fees.

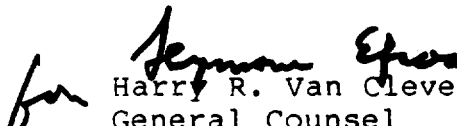
A contracting officer may not cancel a formally advertised (now sealed bid) solicitation after bid opening absent a cogent and compelling reason. Military Base Management, Inc., B-216309, Dec. 4, 1984, 84-2 CPD ¶ 619. We have held that an agency's determination that funds are unavailable for a procurement is sufficient reason to cancel a solicitation and is not for us to question. Id. This is because the award of a contract without sufficient funds would constitute a violation of the Anti-Deficiency Act, 31 U.S.C. § 1341 (1982), which prohibits expenditures of contract obligations in excess of appropriated funds or apportionments made to achieve the most effective use of funds. See A.R.F. Products, Inc., 56 Comp. Gen. 201 at 205 (1976), 76-2 CPD ¶ 541.

In this case, the Marine Corps estimate was based on the previous purchase price for the same equipment, with an inflation factor added. Although it is not clear how long ago the previous purchase occurred, we do not believe that Viereck has shown that the government's use of it for estimating the amount of funding that would be required was arbitrary. The mere fact that, as the protester argues, the item has been offered on the commercial market for a price approximating that of the two bidders does not establish unreasonableness, since either or both might have been willing to offer a substantial discount to the government. Cf. Mid South Industries, B-216281, Feb. 11, 1985, 85-1 CPD ¶ 175 (rejection of sole responsive bid is proper where price is substantially higher than either previous price or government estimate).

In response to Viereck's allegation that the contracting officer should have concluded immediately upon bid opening that funds were insufficient, the agency states that it had to determine the responsiveness of the bids and then consider the possibility of obtaining additional funds. After determining Viereck responsive, additional funds were apparently sought but not obtained, and the solicitation was canceled. We find nothing improper in the agency's action in this regard.

Finally, we do not find any support in the record for Viereck's allegation that if it had been found nonresponsive, the contracting officer would somehow have found sufficient funds. Inference and supposition alone cannot support this type of allegation, which is essentially one of bias on the part of the contracting officer. PAE GmbH, B-212403.3 et al., July 24, 1984, 84-2 CPD ¶ 94.

We deny the protest, as well as Viereck's request for costs and attorney's fees.


for Harry R. Van Cleve
General Counsel